

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

2010 APR 14 PM 1:35

MARTIN MARIETTA AGGREGATES, )  
a division of MARTIN MARIETTA )  
MATERIALS, INC., )

Plaintiff, )

vs. )

DOUGLAS ASPHALT COMPANY and )  
DOUGLAS ASPHALT PAVING, INC., )

Defendants. )

CIVIL ACTION NO. CV 510-037

NOTICE OF REMOVAL OF  
STATE COURT ACTION TO  
UNITED STATES DISTRICT  
COURT

NOTICE OF REMOVAL

Plaintiff, Martin Marietta Aggregates, a division of Martin Marietta Materials, Inc. ("MMA"), through its undersigned counsel, pursuant to 28 U.S.C. §§ 1334, 1446, 1452, and 157(a), and Federal Rule of Bankruptcy Procedure 9027, hereby files this Notice of Removal of State Court Action to United States District Court ("Notice of Removal"), whereby MMA removes to this Court all claims, counterclaims and causes of action in the civil action styled Martin Marietta Aggregates, a division of Martin Marietta Materials, Inc. v. Douglas Asphalt Company and Douglas Asphalt Paving, Inc., which proceeding is removed from the Superior Court of Coffee County, State of Georgia, Civil Action No. 2009S01-57 (the "State Action"). MMA reserves all claims, defenses and rights available to them, and states as follows:

**A. Background**

1. On or about January 20, 2009, MMA initiated the State Action against Douglas Asphalt Company ("DAC") and Douglas Asphalt Paving, Inc. ("DAP").

2. In the State Action, MMA seeks monetary damages in the amount of \$547,056.01 plus interest and costs based on suit on open account.

3. On or about February 27, 2009, DAC and DAP counterclaimed, seeking monetary damages in an unspecified amount.

4. On December 2, 2009, certain of DAC's creditors initiated DAC's instant bankruptcy proceedings and filed an involuntary petition for relief under chapter 11 of the title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Georgia (the "Bankruptcy Court"), Docket No. 09-51272 (the "Bankruptcy Case").

5. On or about March 4, 2010 DAC moved the Bankruptcy Court to lift the automatic stay to various pending litigated matters, including the State Action.

6. On April 1, 2010, the Bankruptcy Court lifted the automatic stay as it applied to the State Action. The Order was entered by the Bankruptcy Court on April 13, 2010, and is attached hereto as Exhibit "A."

**B. Removal Jurisdiction**

1. MMA files this Notice of Removal pursuant to 28 U.S.C. § 1452(a) within the time required by law for removal under Federal Rule of Bankruptcy Procedure 9027(a)(2). Specifically, as the State Action was filed in Coffee County, Georgia this Court is the proper court for removal since it is in "the district where such civil action is pending." 28 U.S.C. § 1452(a).

2. As the State Action is "related to" the Bankruptcy Cases, this Court has subject matter jurisdiction over the State Action and the claims and causes of action asserted

therein pursuant to 28 U.S.C. § 1334(b). The State Action is related to the Bankruptcy Cases because it has the required nexus to the Bankruptcy Case:

In short, "the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Owens-Ill., Inc. v. Rapid Am. Corp. (In re Celotex Corp.)*, 124 F.3d 619, 625 (4th Cir. 1997) (quoting *Pacor*, 743 F.2d at 994). Therefore, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options or freedom of action [\*\*10] (either positively or negatively) and [it] in any way impacts upon the handling and administration of the bankruptcy estate." *Id.* at 625-26; see also *Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251, 1255-56 (4th Cir. 1997).

*Valley Historic Ltd. P'ship v. Bank of N.Y.*, 486 F.3d 831, 836 (4th Cir. Va. 2007); see also *In re Lemco Gypsum, Inc.* 910 F.2d 784, 788 (11<sup>th</sup> Cir. 1990) (joining with the Fourth Circuit and other jurisdictions that have adopted the formulation, known as the *Pacor* test).

**C. Notice**

1. Pursuant to Federal Rule of Bankruptcy Procedure 9027(b) and (c), MMA is filing this Notice of Removal with the clerk for the court where the State Action is now pending (Coffee County) and serving it on counsel for the Defendants. The pleadings and process filed in the State Action are attached hereto as Exhibit "B."

**D. Consent to Jurisdiction**

1. This proceeding is a core matter under 28 U.S.C. § 157(b)(2)(A), (B), and/or (O). Specifically, the outcome of the State Action will affect the administration of the Bankruptcy Case. Should this Court (or any subsequent court to which this Court may transfer the matter) determine that it is a non-core matter under 28 U.S.C. § 157, MMA consents to entry of final orders or judgment by the bankruptcy judge.

**E. Non-Waiver of Defenses**

1. Nothing in this Notice of Removal or related documents shall be interpreted as a waiver or relinquishment of MMA's right to assert any defense or affirmative response in this proceeding.

**WHEREFORE**, pursuant to 28 U.S.C. §§ 1452(a) and 1334(b), and having complied with Federal Rule of Bankruptcy Procedure 9027(a), MMA respectfully requests that the State Action now pending in the Superior Court of Coffee County, Georgia be removed to this Court.

Respectfully submitted this 14<sup>th</sup> day of April, 2010.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

By: /s/ Edgar M. Smith  
Christopher W. Phillips  
State Bar No. 002920  
Bradley M. Harmon  
State Bar No. 327097  
Edgar M. Smith  
State Bar No. 683836  
Attorneys for Defendant

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912)236-0261

## **Exhibit A**

**UNITED STATES BANKRUPTCY COURT**  
**Southern District of Georgia**

In re:  
**Douglas Asphalt Company**  
 Debtor

Case No.: 09-51272-JSD

Judge: John S. Dalis

Chapter: 11

**ORDER ON MOTION FOR RELIEF FROM STAY**

MOVANT: Douglas Asphalt Company

SUBJECT PROPERTY: See attached Exhibit A

- ☒ **Granted.** ☐ The Trustee will discontinue distribution on the movant's claim and reduce movant's claim to the amount paid if no amended claim is filed within \_\_\_\_\_ days of this order.
- ☐ The Trustee shall reduce movant's claim relating to this collateral to the amount paid. Movant is granted leave to seek allowance of a deficiency claim, if appropriate.
- ☐ **Continued to** \_\_\_\_\_ **at** \_\_\_\_\_ **a.m./p.m.** ☐ **Denied.**
- ☐ The debtor shall make timely post-petition payments to movant as required by the Chapter 13 plan.
- ☐ The debtor shall tender payments to cure an arrearage of \_\_\_\_\_ as follows:
- Pay \_\_\_\_\_ by \_\_\_\_\_
- Pay \_\_\_\_\_ per month beginning \_\_\_\_\_
- for \_\_\_\_\_ months and a final payment of \_\_\_\_\_.

## STRICT COMPLIANCE IS ORDERED as follows:

- ☐ That in the event the debtor fails to comply with the terms of this order, the movant, through its attorney of record, may file an affidavit establishing the default, served upon debtor and debtor's attorney. Upon the expiration of fourteen (14) days without the filing of a counteraffidavit by the debtor disputing the fact of default, an order may be entered lifting the automatic stay, converting the case to a Chapter 7 or dismissing the case without further motion, notice or hearing.
- ☐ The automatic stay is lifted automatically and without any further Notice or Order of Court, in the event that debtor remains in default in the performance of any payment obligation set forth in this order fourteen (14) days after the filing and service of a Notice of Non-compliance by Movant. Any action to reimpose the stay seeks injunctive relief and shall be brought as an Adversary Proceeding under Rules 7065 and 9011.
- ☐ The strict compliance provision of this Order shall expire on \_\_\_\_\_.
- ☒ **Other provisions:**

Further ordered that the grant of stay relief extends to all other individuals and entities, whether parties at present or joined as parties in the future, in the five (5) civil actions listed in attached Exhibit A, to whatever extent necessary to carry the matter through to a final, unappealable judgment, whether by complaint, counterclaim, or crossclaim and defenses thereto and including any post-judgment motions and appeals.

Dated: April 13, 2010

  
 John S. Dalis, United States Bankruptcy Judge

By our signatures below we do hereby consent to the entry of the foregoing order:

\_\_\_\_\_  
 Attorney for Movant  
 GASB-55 (Rev. 01/10) CK

\_\_\_\_\_  
 Attorney for Respondent/Debtor

\_\_\_\_\_  
 Trustee

## **Exhibit A**

### **Order on Motion for Relief from Stay**

***Douglas Asphalt Company, Joel H. Spivey, and Kyle Spivey vs. Applied Technical Services, Inc.***, United States District Court Southern District of Georgia, Brunswick Division, Civil Action No. CV206-229;

***Georgia Department of Transportation vs. Douglas Asphalt Company***, Superior Court of Turner County, Georgia, Civil Action No. 2005-CV-0137;

***Martin Marietta Aggregates vs. Douglas Asphalt Company and Douglas Asphalt Paving***, Superior Court of Coffee County, Georgia, Civil Action No. 2009S01-57;

***Douglas Asphalt Company and Joel Spivey vs. Matthews Construction Management, LLC***, State Court of Gwinnett County, Georgia, Case No.09C15994-6;

***Georgia Department of Transportation vs. Douglas Asphalt Company***, Superior of Fulton County, Georgia, Civil Action No. 2004-CV-83139

## **Exhibit B**



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a Division of MARTIN MARIETTA  
MATERIALS, INC.

Plaintiff

v.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.

Defendants.

CIVIL ACTION NO. 2009S01-57

**PLEADINGS & DISCOVERY**

<b>Tab</b>	<b>PLEADINGS &amp; DISCOVERY</b>	<b>Date</b>
1.	Complaint	1/20/09
2.	Summons	1/20/09
3.	Sheriff's Entry of Service	1/30/09
4.	Douglas Asphalt Paving, Inc. Answer to Complaint	2/23/09
5.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt Paving, Inc., Request to Produce	2/23/09
6.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt Paving's First Interrogatories	2/23/09
7.	Answer and CounterClaim of Defendants – Douglas Asphalt Company and Douglas Asphalt Paving, Inc., (filed by C. Dorian Britt	2/27/09
8.	USCR 5.2 Certificate of Service, Defendant's First Interrogatories to Plaintiff	3/30/09
9.	USCR 5.2 Certificate of Service, Defendants' First Request for Production of Documents to Plaintiff	3/30/09
10.	USCR 5.2 Certificate of Service, Notice to Take Deposition of Bill Lowish	5/18/09
11.	USCR 5.2 Certificate of Service, Notice to Take Deposition of Marc Kmec	5/18/09
12.	USCR 5.2 Certificate of Service, Notice to Take Deposition by Video Conference of Todd Wilson	5/18/09
13.	USCR 5.2 Certificate of Service, Amended Notice to Take Deposition of Bill Lowish	5/19/09
14.	USCR 5.2 Certificate of Service, Notice to Take Deposition by Video-Conference of Keith Hedrick	5/20/09
15.	USCR 5.2 Certificate of Service, MMA's Response to Defendants' First Request for Production of Documents	6/1/09
16.	USCR 5.2 Certificate of Service, MMA's Responses to Defendants' First Interrogatories	6/1/09

<b>Tab</b>	<b>PLEADINGS &amp; DISCOVERY</b>	<b>Date</b>
17.	USCR 5.2 Certificate of Service, Plaintiff's First Request for Production of Documents to Douglas Asphalt Company	6/1/09
18.	USCR 5.2 Certificate of Service, Plaintiff's First Interrogatories to Douglas Asphalt Company	6/1/09
19.	USCR 5.2 Certificate of Service, Plaintiff's Second Request for Production of Documents to Douglas Asphalt Company	6/4/2009
20.	USCR 5.2 Certificate of Service, Notice of Depositions for: Joel Spivey – 7/27 at 10:00 am Mary Jean Spivey – 7/27 at 1:00 pm Lori Spivey Smith – 7/27 at 3:00 pm Kyle Spivey – 7/28 at 10:00 am Angelique Box – 7/28 at 12:00 noon Kelly Murray – 7/28 at 2:00 pm	6/26/2009
21.	USCR 5.2 Certificate of Service, Plaintiff's First Interrogatories to Douglas Asphalt Paving, Inc.	7/6/09
22.	USCR 5.2 Certificate of Service, Plaintiff's First Request for Production of Documents to Douglas Asphalt Paving, Inc.	7/6/09
23.	USCR 5.2 Certificate of Service, Notice to Take Deposition of Jim McKnight by Video-conference on Aug. 13, 2009 at 10:00 AM. (Filed by Britt)	7/10/09
24.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt Company's Response to Plaintiff's First Interrogatories	7/10/09
25.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt Company's Response to Plaintiff's First Request for Production of Documents	7/10/09
26.	Plaintiff's First Amended Complaint	7/23/09
27.	Joint Motion for Extension of Discovery	8/7/09
28.	USCR 5.2 Certificate of Service, Amended Notice for Plaintiff to take Depositions of: <ul style="list-style-type: none"> <li>• Joel Spivey</li> <li>• Kyle Spivey</li> <li>• Lori Spivey Smith</li> <li>• Mary Jean Spivey</li> <li>• Angelique Box</li> <li>• Kelly Murray</li> </ul> On Sept. 2 and Sept. 3 at offices of Dorian Britt	8/10/09
29.	USCR 5.2 Certificate of Service, Notice to Take Deposition by Video-Conference of Tony DeRico in Augusta on Sept. 9, 2009	8/10/09
30.	USCR 5.2 Certificate of Service, Notice to Take 30(b)(6) Deposition of Martin Marietta at offices of Savage Turner on Sept. 15, 2009, beginning at 10:00 AM	8/11/09
31.	Consent Order on Extension of Discovery (to Nov. 1, 2009)	8/21/09
32.	Answer of Defendants to Plaintiff's First Amended Complaint	8/26/09
33.	USCR 5.2 Certificate of Service, Douglas' Response to Plaintiff's First	9/9/09

Tab	PLEADINGS & DISCOVERY	Date
	Request for Production of Documents	
34.	USCR 5.2 Certificate of Service, Douglas' Response to Plaintiff's First Interrogatories	9/9/09
35.	USCR 5.2 Certificate of Service, Douglas' Response to Plaintiff's Second Request for Production of Documents	9/9/09
36.	Notice of Appearance – Kenneth E. Futch and Becky Wilcox, co-counsel for Douglas Asphalt Company and Douglas Asphalt Paving	9/10/09
37.	USCR 5.2 Certificate of Service, Amended Notice for Plaintiff to take Deposition of: <ul style="list-style-type: none"> <li>• Mary Jean Spivey</li> </ul> On Oct. 6 at 1:00 PM at offices of Dorian Britt	9/16/09
38.	USCR 5.2 Certificate of Service, Amended Notice for Plaintiff to take Depositions of: <ul style="list-style-type: none"> <li>• Joel Spivey</li> <li>• Kyle Spivey</li> <li>• Lori Spivey Smith</li> <li>• Angelique Box</li> <li>• Kelly Murray</li> </ul> On Oct. 8 and Oct. 9 at offices of Dorian Britt beginning at 10:00 AM	9/16/09
39.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt Paving, Inc.'s Supplemental Response to Plaintiff's First Request for Production of Documents	9/18/09
40.	USCR 5.2 Certificate of Service, Amended Notice for Plaintiff to take Depositions of: <ul style="list-style-type: none"> <li>• Joel Spivey at 10:00 on Nov. 9</li> <li>• Kyle Spivey at 1:00 on Nov. 9</li> <li>• Lori Spivey Smith at 3:00 PM on Nov. 9</li> <li>• Mary Jean Spivey at 10:00 AM on Nov. 10</li> <li>• Angelique Box at 11:00 AM on Nov. 10</li> <li>• Kelly Murray at 1:00 PM on Nov. 10</li> </ul> On Nov. 9 and Nov. 10 at offices of Dorian Britt beginning at 10:00 AM	10/20/09
41.	USCR 5.2 Certificate of Service, Defendant's Notice to Take Deposition by Video-Conference – Dan Cisle – Jacksonville, FL – December 3, 10:00 AM	10/29/09
42.	Second Joint Motion for Extension of Discovery	10/29/09
43.	USCR 5.2 Certificate of Service, Defendant's Notice to Take Deposition by Video-Conference – Becky Chappell; Nov 13, 10:00 AM Duluth, GA	10/30/09
44.	Consent Order on Extension of Discovery	11/3/09
45.	USCR 5.2 Certificate of Service, DAC's Notice to Take Deposition of Tony DiRico by Video Conference on Nov. 30, 10:00 AM, Esquire Court Reporting, 513 Ellis St., Augusta, GA 30901	11/10/09
46.	USCR 5.2 Certificate of Service, DAC's Notice to Take Deposition of Cliff McKeever by Video Conference on December 1, 10:00 AM, Esquire Solutions, 6501 Peake Road, Suite 500, Macon, GA 31210	11/10/09

<b>Tab</b>	<b>PLEADINGS &amp; DISCOVERY</b>	<b>Date</b>
47.	USCR 5.2 Certificate of Service, DAC's Notice to Take Deposition of Keith Bloodworth by Video Conference on December 1, 1:00 PM, Esquire Solutions, 6501 Peake Road, Suite 500, Macon, GA 31210	11/10/09
48.	USCR 5.2 Certificate of Service, DAC's Notice to Take Deposition of Anthony Patterson by Video Conference on December 1, 3:00 PM, Esquire Solutions, 6501 Peake Road, Suite 500, Macon, GA 31210	11/10/09
49.	USCR 5.2 Certificate of Service, DAC's Notice to Take 30(b)(6) Deposition (Bill Lowish) on Dec. 7 at 2:00 PM at Hunter Maclean Exley & Dunn	11/10/09
50.	USCR 5.2 Certificate of Service, Defendants' Notice to Take Deposition by Video-Conference of Glen Powell in Albany, GA on Dec. 8 at 10:00 AM	11/17/09
51.	USCR 5.2 Certificate of Service, Defendant Douglas Asphalt's Supplemental Response to Plaintiff's First Interrogatories	11/25/09
52.	USCR 5.2 Certificate of Service, Defendant's Second Request for Production of Documents to Plaintiff	11/30/09
53.	Martin Marietta's Suggestion of Bankruptcy for Douglas Asphalt Company	12/3/09



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

CIVIL ACTION NO. 2009S0157

**COMPLAINT**

COMES NOW MARTIN MARIETTA AGGREGATES, a division of MARTIN MARIETTA MATERIALS, INC. ("MMA"), Plaintiff herein, by and through its undersigned counsel, and files this civil action against DOUGLAS ASPHALT COMPANY and DOUGLAS ASPHALT PAVING, INC., showing this Honorable Court as follows:

1. DOUGLAS ASPHALT COMPANY is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located in Coffee County, Georgia. DOUGLAS ASPHALT COMPANY is thus subject to the jurisdiction of this Court and venue is proper in this Court. DOUGLAS ASPHALT COMPANY may be served through its registered agent Joel Spivey, at 12331 Hwy 32 West, Ambrose, GA 31512.

2. DOUGLAS ASPHALT PAVING, INC. is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located in Coffee County, Georgia. DOUGLAS ASPHALT PAVING, INC. is thus subject to the jurisdiction of this Court and venue is proper in this Court. DOUGLAS ASPHALT PAVING, INC. may be served through its registered agent Mary Jean Spivey, at 12331 Hwy 32 West, Ambrose, GA 31512.

Filed in Office this  
20 day of Jan 09  
Angela Spivey-Hutto  
Clerk, Superior Court & State Court  
Coffee County, Georgia

3. Upon information and belief, DOUGLAS ASPHALT PAVING, INC. is the successor in interest to DOUGLAS ASPHALT COMPANY, and has assumed some or all of the liabilities and debts of DOUGLAS ASPHALT COMPANY.

4. DOUGLAS ASPHALT COMPANY entered into an agreement for an open account/line of credit with MMA for MMA to provide aggregate materials to DOUGLAS ASPHALT COMPANY. MMA provided aggregate materials to DOUGLAS ASPHALT COMPANY on the open account on numerous occasions.

5. DOUGLAS ASPHALT COMPANY currently owes \$547,056.01 on the open account to MMA.

6. On Sept. 22, 2008, MMA notified DOUGLAS ASPHALT COMPANY that it was in default under the terms of the open account/line of credit agreement for its failure to make payments on the \$547,056.01 owed to MMA. On the same date, MMA demanded payment of the full amount of \$547,056.01.

7. As of the date of this Complaint, DOUGLAS ASPHALT COMPANY has made no payments on the outstanding balance of \$547,056.01 on the open account with MMA.

8. DOUGLAS ASPHALT COMPANY has failed and refused to pay MMA the full amount due and owing for the afore-mentioned aggregate materials, despite a demand for payment by MMA.

9. DOUGLAS ASPHALT COMPANY breached its obligations to pay MMA under the open account/line of credit agreement.

10. MMA is entitled to a judgment in the amount of \$547,056.01 against DOUGLAS ASPHALT COMPANY for the amount owed on the aforementioned open account.

11. Additionally, MMA is entitled to interest on the \$547,056.01 amount owed by DOUGLAS ASPHALT COMPANY on the open commercial account at the rate of one and one-half percent (1 ½ %) per month from the date said amount became due and payable, pursuant to O.C.G.A. § 7-4-16.

12. MMA is also entitled to recover its costs of this action and expenses of litigation, including attorney's fees, from DOUGLAS ASPHALT COMPANY pursuant to O.C.G.A. § 13-1-11 and/or O.C.G.A. § 13-6-11.

13. DOUGLAS ASPHALT PAVING, INC., as successor in interest to DOUGLAS ASPHALT COMPANY, and who assumed some or all of DOUGLAS ASPHALT COMPANY'S liabilities and debts, owes MMA the entire unpaid amount \$547,056.01 on the open commercial account set forth above, and is liable to MMA for the amounts incurred by its predecessor in interest on the aforementioned open commercial account.

14. MMA is entitled to interest on the \$547,056.01 amount owed by DOUGLAS ASPHALT PAVING, INC. on the open commercial account at the rate of one and one-half percent (1 ½ %) per month from the date said amount became due and payable, pursuant to O.C.G.A. § 7-4-16.

15. MMA is also entitled to recover its costs of this action and expenses of litigation, including attorney's fees, from DOUGLAS ASPHALT PAVING, INC. pursuant to O.C.G.A. § 13-1-11 and/or O.C.G.A. § 13-6-11.

WHEREFORE, Martin Marietta Aggregates hereby requests that service be made on Douglas Asphalt Company and Douglas Asphalt Paving, Inc., and that judgment be entered as follows:



(a) For judgment against Douglas Asphalt Company and Douglas Asphalt Paving, Inc. for the amount presently due and owing of \$547,056.01, plus interest at the rate of one and one-half percent per month from the date the same became due and payable;

(b) For all costs, expenses and attorney's fees expended by MMA in prosecuting this action; and

(d) For such other and further relief as this Court deems just and proper.

Respectfully submitted this 16<sup>th</sup> day of January, 2009.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

By: 

Bradley M. Harmon

State Bar No. 327097

*Attorney for Plaintiff Martin Marietta  
Aggregates*

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912) 236-0261



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
A DIVISION OF  
MARTIN MARIETTA MATERIALS, INC.

Plaintiffs,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.

Defendants.

CIVIL ACTION NO. 2009-01-57

**SUMMONS**

To the Above Named Defendant:

Douglas Asphalt Paving, Inc.  
c/o Mary Jean Spivey, Registered Agent  
12331 Hwy 32 West  
Ambrose, GA 31512

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney whose name and address is:

Bradley M. Harmon, Esq.  
Hunter Maclean Exley & Dunn, P.C.  
P.O. Box 9848  
Savannah, GA 31412-0048

an answer to the complaint which is herewith served upon you, within 30 days after service of summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 20 day of Jan, 2009.

ANGELA C. SPELL  
Clerk of Superior Court  
COFFEE COUNTY

By: Christine Knight  
Deputy Clerk



UNITED STATES DISTRICT COURT,  
 a Division of UNITED STATES DISTRICT  
 COURT,  
 Plaintiff(s)  
 vs.

**VS.**

Plaintiff(s)

DOUGLAS ASPHALT COMPANY, INC.)  
DOUGLAS ASPHALT PAVING, INC.)  
)  
)

**Defendant(s)**

Defendant(s)

Garnishee

## Garnishee

Case Number 202501

Cause of Action\_\_\_\_\_

<sup>a</sup> Values are means ± SD.

1. The following table shows the number of people who visited the museum in each month from January to December.

2008-09-05

2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

(Plaintiff or Plaintiff's Attorney)

NOTICE OF SERVICE ON: JOSEPH ARMAND MATTOS, JR.

$$S_{\text{eff}} = \int d^4x \left[ -\frac{1}{2} (\partial_\mu \phi)^2 + \frac{1}{2} m^2 \phi^2 + \frac{\lambda}{4!} \phi^4 \right]$$

19931 1994 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 106

$$\frac{\partial}{\partial t} \left( \frac{1}{2} \rho \mathbf{u} \cdot \mathbf{u} \right) + \nabla \cdot \left( \frac{1}{2} \rho \mathbf{u} \otimes \mathbf{u} \right) = \nabla \cdot \left( \frac{1}{2} \rho \mathbf{u} \otimes \mathbf{u} \right) + \nabla \cdot \left( \frac{1}{2} \rho \mathbf{u} \otimes \mathbf{u} \right)$$

(Name and Address of Person Served)

## PERSONAL

I have this day served the Defendant \_\_\_\_\_ personally with  
a true copy of the within petition and summons.

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff.

## RESIDENTIAL

I have this day served the Defendant \_\_\_\_\_ with a true copy  
of the within petition and summons by serving same upon \_\_\_\_\_,  
a person Sui Juris residing on the premises.

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

CORPORATE

I have this day served the Defendant Chen, Joseph, a corporation,  
with a true copy of the within petition and summons by handing the same in person to  
Joe Chen, an officer of said corporation.

This 28 day of Jan 19 2008 2006 10-10-09 Deputy Sheriff

**TACKED AND  
MAILED**

I have this day executed the within Affidavit and Summons by tacking a copy of the within process on the door of the premises designated in said action and also by depositing a true copy thereof in the United States mail in an envelope properly addressed to Defendant at his last known address with sufficient postage affixed.

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

## GARNISHEE

I have this day at the hour of \_\_\_\_\_ served the Summons of Garnishment upon \_\_\_\_\_ by handing the original of same to \_\_\_\_\_ in person, he/she being \_\_\_\_\_ and agent in charge of \_\_\_\_\_ at the time of service in Chatham County.

This \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_. \_\_\_\_\_ day of Jan \_\_\_\_\_ 2000 Deputy Sheriff

**MAILED**

This is to certify that I have this day served the Defendant \_\_\_\_\_ with a copy of the within Affidavit and Summons by depositing a copy thereof in the United States Mail, in an envelope properly addressed to Defendant at his last known address as shown on the said Affidavit, with adequate postage affixed thereon.

Clerk, Superior Court & State Court,  
Coffee County, Georgia

This \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_. \_\_\_\_\_, Deputy Sheriff

**DILIGENT SEARCH**

Diligent search made and Defendant is not to be found in the jurisdiction of this

court \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

## SHERIFF'S ENTRY OF SERVICE

MARTIN MARIETTA AGGREGATES, )  
 a Division of MARTIN MARIETTA )  
 MATERIALS, INC. )  
 Plaintiff(s)  
 vs.  
 DOUGLAS ASPHALT COMPANY AND )  
 DOUGLAS ASPHALT PAVING, INC. )  
 Defendant(s)

Case Number 2009-201-57

Cause of Action \_\_\_\_\_

Bradley M. Hanson, Esq.  
 Hunter Nielsen Esley & Dunn, PC

P.O. Box 1010

Savannah, GA 31412  
 (Plaintiff or Plaintiff's Attorney)

NOTICE OF SERVICE ON: DOUGLAS ASPHALT COMPANY  
 C/O Joel Solvay, Registered Agent  
 12331 Hwy 27 West

Ambrose, GA 31512  
 (Name and Address of Person Served)

Garnishee

PERSONAL I have this day served the Defendant \_\_\_\_\_ personally with  
 a true copy of the within petition and summons.  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

RESIDENTIAL I have this day served the Defendant \_\_\_\_\_ with a true copy  
 of the within petition and summons by serving same upon \_\_\_\_\_,  
 a person Sui Juris residing on the premises.  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

CORPORATE I have this day served the Defendant \_\_\_\_\_, a corporation,  
 with a true copy of the within petition and summons by handing the same in person to  
 \_\_\_\_\_, an officer of said corporation.  
 This 28 day of Jan 2009, \_\_\_\_\_, Deputy Sheriff

TACKED AND MAILED I have this day executed the within Affidavit and Summons by tacking a copy of the within process on  
 the door of the premises designated in said action and also by depositing a true copy thereof in the United  
 States mail in an envelope properly addressed to Defendant at his last known address with sufficient postage affixed.  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

GARNISHEE I have this day at the hour of \_\_\_\_\_ served the Summons of Garnishment upon  
 \_\_\_\_\_ by handing the original of same to \_\_\_\_\_  
 in person, he/she being \_\_\_\_\_ and agent in charge of \_\_\_\_\_  
 at the time of service in Chatham County.  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

MAILED This is to certify that I have this day served the Defendant \_\_\_\_\_  
 with a copy of the within Affidavit and Summons by depositing a copy thereof in the United States mail  
 in an envelope properly addressed to Defendant at his last known address as shown \_\_\_\_\_  
 with adequate postage affixed thereon.  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

DILIGENT SEARCH Diligent search made and Defendant is not to be found in the jurisdiction of this  
 court \_\_\_\_\_  
 This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, \_\_\_\_\_, Deputy Sheriff

Filed in Office this

30 day of Jan. 2009 Deputy Sheriff

Angela Spill-Hutto

Clerk, Superior Court & State Court  
Coffee County, Georgia







6.

Defendant denies paragraph six.

7.

Defendant denies paragraph seven.

8.

Defendant denies paragraph eight.

9.

Defendant denies paragraph nine.

10.

Defendant denies paragraph ten.

11.

Defendant denies paragraph eleven.

12.

Defendant denies paragraph twelve.

13.

Defendant denies paragraph thirteen.

14.

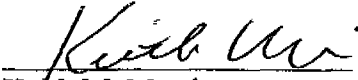
Defendant denies paragraph fourteen.

15.

Defendant denies paragraph fifteen.

This 23 day of February, 2009.

Respectfully Submitted,



Keith M. Morris

Attorney for Defendant

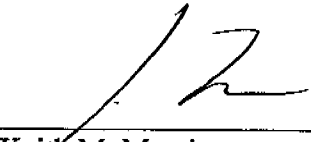
State Bar No.: 524375

581 East Parker Street  
Baxley, Ga. 31513  
912-367-2636

CERTIFICATE OF SERVICE

This is to certify that I have this 23 day of, Feb 2009, served opposing counsel with a true and correct copy of **Defendant's Answer to Complaint** by depositing a copy of same in the United States Mail with sufficient postage affixed thereto and addressed as follows:

Bradley M. Harmon, Esq.  
Hunter Maclean Exley, & Dunn, P.C.  
P.O. Box 9848  
Savannah, Ga. 31412-0048

  
\_\_\_\_\_  
Keith M. Morris  
Attorney for Defendant  
State Bar No: 524375

581 E. Parker St.  
Baxley, Ga. 31513  
(912) 367-2636

IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES, §  
A DIVISION OF  
MARTIN MARIETTA MATERIALS, INC.,  
*Plaintiff* §

vs.

§

CIVIL ACTION  
FILE NO:2009S01-57

DOUGLAS ASPHALT COMPANY and §  
DOUGLAS ASPHALT PAVING, INC.,  
*Defendant* §


§

**CERTIFICATE OF SERVICE OF DISCOVERY MATERIALS**

Pursuant to Uniform Superior Court Rule 5.2, I, Keith M. Morris, Attorney for Defendant, do hereby certify that I have this day served a true and correct copy of **Defendant's Answer to Complaint** to opposing counsel in the above styled matter, by depositing a copy of same in the United States mail in a properly-addressed envelope with adequate postage thereon to:

Bradley M. Hammon. Esq.  
Hunter Maclean Exley & Dunn, P.C.  
P.O. Box 9848  
Savannah, Ga. 31412-0048

This 23 day of Feb, 2009.

  
\_\_\_\_\_  
Keith M. Morris  
Attorney for Defendant  
State Bar No: 524375

581 E. Parker St.  
Baxley, Ga. 31513  
(912) 367-2636



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES, §  
A DIVISION OF  
MARTIN MARIETTA MATERIALS, INC.,  
*Plaintiff* §

vs.

§

CIVIL ACTION  
FILE NO:2009S01-57

DOUGLAS ASPHALT COMPANY and §  
DOUGLAS ASPHALT PAVING, INC.,  
*Defendant* §

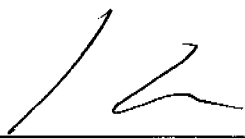
§

**CERTIFICATE OF SERVICE OF DISCOVERY MATERIALS**

Pursuant to Uniform Superior Court Rule 5.2, I, Keith M. Morris, Attorney for  
Defendant, do hereby certify that I have this day served a true and correct copy of **Defendant's**  
**Request to Produce to Plaintiff** to opposing counsel in the above styled matter, by depositing a  
copy of same in the United States mail in a properly-addressed envelope with adequate postage  
thereon to:

Bradley M. Hammon. Esq.  
Hunter Maclean Exley & Dunn, P.C.  
P.O. Box 9848  
Savannah, Ga. 31412-0048

This 23 day of Feb, 2009.

  
\_\_\_\_\_  
Keith M. Morris  
Attorney for Defendant  
State Bar No: 524375

581 E. Parker St.  
Baxley, Ga. 31513  
(912) 367-2636



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES, §  
A DIVISION OF  
MARTIN MARIETTA MATERIALS, INC.,  
*Plaintiff* §

vs.

§

CIVIL ACTION  
FILE NO:2009S01-57

DOUGLAS ASPHALT COMPANY and §  
DOUGLAS ASPHALT PAVING, INC.,  
*Defendant* §

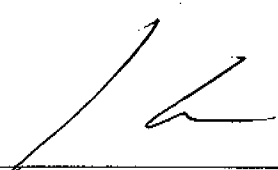
§

**CERTIFICATE OF SERVICE OF DISCOVERY MATERIALS**

Pursuant to Uniform Superior Court Rule 5.2, I, Keith M. Morris, Attorney for Defendant, do hereby certify that I have this day served a true and correct copy of **Defendant's First Interrogatories to Plaintiff** to opposing counsel in the above styled matter, by depositing a copy of same in the United States mail in a properly-addressed envelope with adequate postage thereon to:

Bradley M. Hammon, Esq.  
Hunter Maclean Exley & Dunn, P.C.  
P.O. Box 9848  
Savannah, Ga. 31412-0048

This 23 day of Feb, 2009.

  
\_\_\_\_\_  
Keith M. Morris  
Attorney for Defendant  
State Bar No: 524375

581 E. Parker St.  
Baxley, Ga. 31513  
(912) 367-2636





**IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA**

**MARTIN MARIETTA AGGREGATES,**  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

**Defendants.**

Civil Action No. 2009S01-57

**ANSWER AND COUNTERCLAIM OF DEFENDANTS**

**COME NOW** Defendants Douglas Asphalt Company and Douglas Asphalt Paving, Inc. and hereby submit their answers and defenses to the Complaint filed by Plaintiff and also counterclaim against Plaintiff, showing the following:

## First Defense

Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted.

## Second Defense

Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, ratification and/or laches.

### Third Defense

Plaintiff's Complaint is barred by the applicable statutes of limitation and/or repose.

**Fourth Defense**

Plaintiff's claims, if any exist, are barred by reason of the fact that any injury or damage allegedly sustained by Plaintiff was the direct and proximate result of acts or omissions on the part of Plaintiff.

**Fifth Defense**

Plaintiff's claims, if any exist, are barred by reason of the fact that the incidents described in Plaintiff's Complaint, and any and all alleged damages resulting therefrom, are the proximate result of the acts or omissions of third parties for whom Defendants are not responsible.

**Sixth Defense**

Plaintiffs' Complaint is barred by their failure to satisfy conditions precedent.

**Seventh Defense**

Plaintiff's claims against Douglas Asphalt Paving, Inc. should be dismissed as Douglas Asphalt Paving, Inc. is not a proper party to the issues in this matter.

**Eighth Defense**

Defendants respond to the numbered paragraphs of Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Denied.
4. Defendants admit that MMA and Douglas Asphalt Company ("DAC") entered into an agreement in which MMA would provide DAC with aggregate material to DAC. Defendants deny that MMA adequately performed its obligations pursuant to said agreement(s).

5. Denied.

6. Admitted.

7. Defendants admit that DAC has made no payments to MMA since September 22, 2008. Defendants that any amounts are owed to MMA

8. Defendants admit that DAC has made no payments to MMA since September 22, 2008. Defendants deny that any amounts are owed to MMA.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

WHEREFORE, Defendants pray that:

- (a) Plaintiff's Complaint be dismissed with prejudice;
- (b) Defendants' costs in defending this action, including reasonable attorneys' fees, be assessed against Plaintiff; and
- (c) Defendants have such other and further relief as is just and proper.

### **COUNTERCLAIM**

**COMES NOW** DOUGLAS ASPHALT COMPANY, Defendant in the above-styled action, and files its Counterclaim against Plaintiff as follows:

1. Pursuant to one or more agreements between Defendant Douglas Asphalt Company ("DAC") and MMA, MMA was required to provide aggregate material within a specific schedule for roadway projects assigned to DAC by the Georgia Department of Transportation ("GDOT").

2. On numerous occasions, MMA failed to provide the agreed upon aggregate in a timely manner, thereby cause substantial delays with the projects.

3. As a result of MMA's delays in providing materials, DAC incurred liquidated damages and other consequential damages.

4. As a result of MMA's delays, DAC has suffered significant financial injury.


5. Plaintiff has engaged in bad faith conduct in their dealings with Defendants and/or have been stubbornly litigious, entitling Defendants to attorney's fees and litigation expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Defendant Douglas Asphalt Company prays:

- a) That it have judgment against Plaintiff MMA for all damages it has sustained due to MMA's failure to fulfill its obligations to DAC;
- b) That it recover attorneys' fees and expenses from Plaintiff MMA;
- c) That it have a jury trial on all issues so triable; and
- d) That it have any other relief this Honorable Court finds just and proper.

This 27th day of February, 2009.

**SAVAGE, TURNER, PINSON & KARSMAN**

By:   
Brent J. Savage  
Georgia Bar No. 627450  
C. Dorian Britt  
Georgia Bar No. 083259


P.O. Box 10600  
Savannah, Georgia 31412  
(912) 231-1140

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all parties in the above matter with a true and correct copy of the foregoing by causing same to be placed in the United States Mail with proper postage affixed thereon addressed to the following:

Bradley M. Harmon, Esq.  
Hunter Maclean Exley & Dunn  
P. O. Box 9848  
Savannah, GA 31412-0048

This 27<sup>th</sup> day of February, 2009.

  
C. DORIAN BRITT  
Georgia Bar No. 083259

SAVAGE, TURNER, PINSON & KARSMAN  
P. O. Box 10600  
Savannah, Georgia 31412  
(912) 231-1140  
(912) 231-9157 - Facsimile

















IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

Civil Action No. 2009S01-57

---

**CERTIFICATE OF SERVICE PURSUANT TO RULE 5.2**

I hereby certify that, pursuant to Rule 5.2, I have served a true and correct copy of the above and foregoing **NOTICE TO TAKE DEPOSITION BY VIDEO-CONFERENCE (MARC KMEC)** by causing same to be placed in the United States mail, postage prepaid, to:

**Bradley M. Harmon, Esq.  
Hunter Maclean Exley & Dunn  
P. O. Box 9848  
Savannah, GA 31412-0048**

This 18<sup>th</sup> day of May, 2009.

  
C. DORIAN BRITT  
Georgia Bar No. 083259

SAVAGE, TURNER, PINSON & KARSMAN  
P. O. Box 10600  
Savannah, Georgia 31412  
(912) 231-1140  
(912) 231-9157 - Facsimile









IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

Civil Action No. 2009S01-57

---

**CERTIFICATE OF SERVICE PURSUANT TO RULE 5.2**

I hereby certify that, pursuant to Rule 5.2, I have served a true and correct copy of the above and foregoing **AMENDED NOTICE TO TAKE DEPOSITION (BILL LOWISH)** by causing same to be placed in the United States mail, postage prepaid, to:

**Bradley M. Harmon, Esq.  
Hunter Maclean Exley & Dunn  
P. O. Box 9848  
Savannah, GA 31412-0048**

This 19<sup>th</sup> day of May, 2009.

  
C. DORIAN BRITT  
Georgia Bar No. 083259

SAVAGE, TURNER, PINSON & KARSMAN  
P. O. Box 10600  
Savannah, Georgia 31412  
(912) 231-1140  
(912) 231-9157 - Facsimile







IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

CIVIL ACTION NO. 2009S01-57

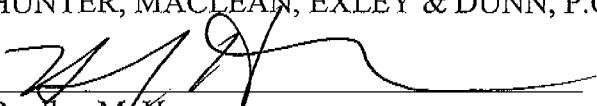
**RULE 5.2 CERTIFICATE**

COMES NOW PLAINTIFF, MARTIN MARIETTA AGGREGATES, and files this certificate in compliance with Uniform Superior Court Rule 5.2 and certifies that it has served Martin Marietta Aggregates' Response To Defendants' First Request for Production of Documents by hand delivery, as follows:

C. Dorian Britt  
Savage, Turner, Pinson & Karsman  
304 E. Bay Street  
Savannah, GA 31401

This 1 day of June, 2009.


HUNTER, MACLEAN, EXLEY & DUNN, P.C.

  
Bradley M. Harmon

State Bar No. 327097

Attorney for Plaintiff Martin Marietta  
Aggregates

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912) 236-0261

Filed in Office this  
3 day of June 2009  
  
Clerk, Superior Court & State Court  
Coffee County, Georgia





IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

CIVIL ACTION NO. 2009S01-57

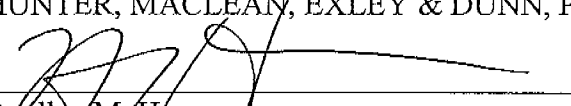
**RULE 5.2 CERTIFICATE**

COMES NOW PLAINTIFF, MARTIN MARIETTA AGGREGATES, and files this certificate in compliance with Uniform Superior Court Rule 5.2 and certifies that it has served Martin Marietta Aggregates' Response To Defendants' First Interrogatories by hand delivery, as follows:

C. Dorian Britt  
Savage, Turner, Pinson & Karsman  
304 E. Bay Street  
Savannah, GA 31401

This 1 day of June, 2009.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.


  
Bradley M. Harmon

State Bar No. 327097

Attorney for Plaintiff Martin Marietta  
Aggregates

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912) 236-0261

Filed in Office this  
3 day of June 2009

  
Clerk, Superior Court & State Court  
Coffee County, Georgia



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

CIVIL ACTION NO. 2009S01-57

RULE 5.2 CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing  
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO  
DOUGLAS ASPHALT COMPANY upon all parties to this matter via hand delivery to the  
following:

Brent Savage  
C. Dorian Britt  
Savage, Turner, Pinson & Karsman  
304 E. Bay Street  
Savannah, Georgia 31401


This 1<sup>st</sup> day of June, 2009.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

By: 

Bradley M. Harmon  
State Bar No. 327097  
Nicholas J. Laybourn  
State Bar No. 142333  
*Attorneys for Plaintiff Martin Marietta  
Aggregates*

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912) 236-0261

Filed in Office this  
3 day of June 2009  
  
Clerk, Superior Court & State Court  
Coffee County, Georgia



IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

MARTIN MARIETTA AGGREGATES,  
a division of MARTIN MARIETTA  
MATERIALS, INC.,

Plaintiff,

vs.

DOUGLAS ASPHALT COMPANY and  
DOUGLAS ASPHALT PAVING, INC.,

Defendants.

CIVIL ACTION NO. 2009S01-57

RULE 5.2 CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing  
**PLAINTIFF'S FIRST INTERROGATORIES TO DOUGLAS ASPHALT COMPANY**  
upon all parties to this matter via hand delivery to the following:

Brent Savage  
C. Dorian Britt  
Savage, Turner, Pinson & Karsman  
304 E. Bay Street  
Savannah, Georgia 31401


This 1<sup>st</sup> day of June, 2009.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

By: 

Bradley M. Harmon  
State Bar No. 327097  
Nicholas J. Laybourn  
State Bar No. 142333  
*Attorneys for Plaintiff Martin Marietta  
Aggregates*

200 East Saint Julian Street  
Post Office Box 9848  
Savannah, Georgia 31412  
(912) 236-0261

Filed in Office this  
3 day of June 2009  
  
Clerk, Superior Court & State Court  
Coffee County, Georgia